

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 18 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0140-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
DONALD LEE CORBIN,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2002021145

Honorable Gary E. Donahoe, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney  
By Linda Van Brakel

Phoenix  
Attorneys for Respondent

Donald L. Corbin

Florence  
In Propria Persona

BRAMMER, Judge.

¶1 Petitioner Donald Corbin seeks review of the trial court’s order denying his successive petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Corbin has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Corbin was convicted of four counts of sexual conduct with a minor under fifteen and one count of sexual abuse. The trial court imposed mitigated, consecutive terms of imprisonment totaling 54.5 years. Corbin’s convictions and sentences were affirmed on appeal. *State v. Corbin*, No. 1 CA-CR 03-0753 (memorandum decision filed Mar. 18, 2004). Thereafter Corbin initiated his first proceeding for post-conviction relief. The trial court denied relief, and Division One of this court denied review. Corbin filed a second notice and petition of post-conviction relief, and the trial court again denied relief. Corbin apparently did not seek review of that ruling, but instead filed a “motion to correct conviction and sentence,” which the trial court treated as a third petition for post-conviction relief.<sup>1</sup>

¶3 In that petition, Corbin argued his sentences on the sexual conduct charges were illegal and should be reduced because there was testimony at trial that “no penetration” of the victim had occurred and therefore his convictions “should be

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<sup>1</sup>Corbin subsequently filed a “motion for permission to file delayed appeal,” in which he suggests he did not intend his motion to be a petition for post-conviction relief and requested a delayed appeal. But, Corbin has already appealed from his convictions and any motion to modify his sentences pursuant to Rule 24.3, Ariz. R. Crim. P., would be untimely. Therefore the only avenue of relief available was a Rule 32 petition and the trial court did not err in treating his motion as such.

corrected and changed to sexual abuse.” Concluding Corbin had “failed to state any colorable claim within any of the exceptions for a successive Rule 32 petition,” the trial court summarily denied relief.

¶4 On review, Corbin again maintains his sentences “are illegal as they are based upon improper and inaccurate information.” He also now characterizes his claim as one of actual innocence. We agree with the trial court that any claim of an illegal sentence is precluded. *See* Ariz. R. Crim. P. 32.2(a)(3). Additionally, because this court does not consider new arguments on review, we also reject Corbin’s claim of actual innocence. *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii).

¶5 Furthermore, even if we were to accept Corbin’s assertion that the claim of actual innocence had been presented implicitly below, we would reject it. Corbin has not explained “the reasons for not raising the claim in [his] previous petition[s] or in a timely manner,” as required by Rule 32.2(b). And, Corbin’s claim of actual innocence is based on his assertion that “there was no substantiated evidence that penetration of the victim’s vulva or vagina occurred . . . that would fulfill the elements of sexual misconduct with a minor.” At trial, however, the victim testified that on each charged occasion Corbin had “slid his fingers into [her] privates,” had “put his finger inside [her] privates,” and had “put his finger inside [her].” In support of his claim of innocence, Corbin relies on the testimony of one expert witness that she could not say with certainty whether there had been penetration and the fact that another expert who testified had not actually spoken to the victim. Thus, his claim is essentially a request for this court to reweigh the evidence

presented at trial, which we will not do. *See State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Therefore, although we grant the petition for review, we deny relief.

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Presiding Judge